

TACOMA MARINE TERMINAL OPERATOR CONFERENCE AGREEMENT

FMC Agreement No. 201241

A Marine Terminal Operator Conference Agreement

Expiration Date: [None]

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ARTICLE 1 FULL NAME OF THE AGREEMENT

The full name of this Agreement is the Tacoma Marine Terminal Conference Agreement (“Agreement”).

ARTICLE 2 PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to permit the Parties (as defined below) to: (a) meet, consult, discuss, and agree on, establish, and maintain rates, charges, schedules, classifications, regulations, rules, and practices related to their operations, facilities, and services at marine terminals owned and/or operated by the Parties at the Port of Tacoma (“Port”), in order to improve service, increase efficiency, and otherwise optimize conditions at the Port to better serve the interests of the shipping public at the Port; (b) to exchange information and data; and (c) to discuss and agree upon other matters regarding the Conference Rules (as defined below).

ARTICLE 3 PARTIES TO THE AGREEMENT

The Parties to this Agreement (as defined below) are marine terminal operators as defined in the Shipping Act of 1984, as amended, codified at 46 U.S.C. § 40101 et seq. (the “Shipping Act”). Each Party (as defined below) operates public wharves and other marine terminal facilities in connection with ocean common carriage at the Port. The Parties to this Agreement (each a “Party” and together the “Parties”) are those marine terminal operators specified in Appendix A.

ARTICLE 4 SCOPE

The geographic scope of the Agreement is the area in and around the Port, covering the Parties’ activities at their respective marine terminal and related facilities that handle cargo transported in the foreign and/or foreign and domestic commerce of the United States.

ARTICLE 5 AGREEMENT AUTHORITY

- A. The Parties are authorized to meet, consult, discuss, collect and exchange information, and agree upon, implement, and enforce matters relating to the establishment, maintenance, revision, cancellation, pass-through, suspension, and/or expiration of the following: rates and charges, terms and conditions, costs and expenses, compliance and compliance costs recovery measures, fees, schedules, classifications, regulations, assessments, rules, and practices to be applied by any of the Parties through their individual marine terminal operator schedules, through a joint schedule as provided below, or through terminal services agreements as defined in 46 CFR § 535.309(a), in connection with marine terminal services and facilities at the Port, including wharfage, dockage, sheddage, interchange of cargo, containers, chassis, and equipment, free time, demurrage, detention, usage, rents, storage, receipt, handling, and release of freight and containers, loading/unloading of cargo onto and from trucks, lighters, barges and railroad cars, licenses, berth assignments, credit, payments and collections, health, safety, and environmental requirements and needs (collectively, “Conference Rules”).
- B. The Parties shall be authorized to establish, publish, enforce, cancel, revise, and maintain a common marine terminal schedule containing any matter agreed upon pursuant to this Agreement and consistent with the regulations of the Federal Maritime Commission (“FMC”) at 46 CFR §§ 525.2 and 525.3.
- C. The Parties shall be authorized to (i) meet, consult, and discuss Conference Rules and any other issue relating to the Agreement with the Port and other port authorities (including for this purpose the Northwest Seaport Alliance, collectively with the Port, “Port Authorities”),

and (ii) exchange information with the Port Authorities regarding Conference Rules and any other issue.

- D. The Parties are authorized, subject to the filing and effectiveness provisions of the Shipping Act and implementing regulations of the FMC, to the extent applicable, to meet and confer, individually or as a group, with one or more users (including inland carriers, ocean common carriers, intermediaries, and/or cargo interests), federal, state, and local government agencies and officials, Port Authorities, equipment manufacturers and equipment providers, and other organizations, associations, or persons to discuss, negotiate, agree upon, and implement any of the matters set forth in this Agreement.
- E. Nothing in this Agreement shall be construed to alter or supersede the rights and obligations of any Party under any applicable collective bargaining agreement.
- F. The Parties are authorized to obtain, compile, maintain, exchange, and discuss information, records, statistics, studies, agreements, and data pertaining to all matters within the authority of this Agreement, whether prepared by one or more of the Parties or obtained from outside sources, relating to or for purposes of the Parties utilizing the authorities provided by this Agreement.
- G. The Parties may hire and retain consultants, counsel, accountants, contractors, agents, and other providers to carry out any matters or responsibilities discussed, established, or agreed to under this Agreement, subject to the involved Parties' agreement regarding costs in connection with such hiring. The Parties may meet, confer, discuss, and agree upon the formation of any entity or company for the purpose of administering, managing, and maintaining any joint schedule, the conference, any authority provided for herein, and for any other lawful purpose.

- H. Implementation of any agreement reached among the Parties or with third parties hereunder shall be subject to the filing and effectiveness provisions of the Shipping Act and implementing regulations of the FMC, to the extent applicable.

ARTICLE 6 ADMINISTRATION AND DELEGATION OF AUTHORITY

- A. This Agreement shall be administered by the Parties and/or their duly authorized representatives. The activities authorized in this Agreement may be carried out through meetings, telephone communications, video conferences, electronic mail or other electronic communications, writings, and/or such other means of communications as the Parties may deem appropriate. The Parties may establish such standing, advisory, and ad hoc committees as they deem desirable for the furtherance of the purposes of this Agreement. The Parties are authorized to share administrative and other costs of operating the Conference as they may agree from time to time.
- B. The Parties shall designate a Secretary to act as administrator of the Agreement. The Parties are authorized (but not required) to designate a Treasurer, Website Administrator, and/or any other administrative officials, either independently or with services provided by personnel of the Parties, to administer the Agreement as they may deem necessary and appropriate. Subject to the direction of the Parties, such administrators shall have general responsibility for supervising and monitoring day-to-day activities under the Agreement, including maintaining all records of the Agreement and administering all documentation and reporting requirements applicable to or under the Agreement, including but not limited to, the filing of minutes with the FMC. The Secretary shall make reports to the Parties as required or directed from time to time, and shall take any other actions as directed by the Parties to further the purposes of the Agreement.

- C. The following are authorized to subscribe to and file this Agreement and any accompanying materials, and any subsequent amendments to this Agreement with the FMC: (i) any authorized officer of each of the Parties; and (ii) legal counsel for each of the Parties.

ARTICLE 7 MEMBERSHIP

Membership is limited to the Parties, except that any other marine terminal operator (within the meaning of the Shipping Act) at the Port may be admitted by unanimous vote of the Parties. In accordance with the Shipping Act and FMC regulations at 46 CFR § 535.103(f)(2), consent shall not be unreasonably withheld, and shall be granted on the same terms and conditions applicable to the Parties.

ARTICLE 8 VOTING

Except as otherwise provided herein, decisions hereunder shall be reached by unanimous agreement of the Parties.

ARTICLE 9 DURATION, TERMINATION, AND WITHDRAWAL

- A. The effective date of this Agreement shall be the date it becomes effective under the U.S. Shipping Act after filing with the FMC, and it shall remain in effect until terminated by agreement of the Parties or until all but one of the Parties withdraws.
- B. Any Party may withdraw from the Agreement at any time by giving ninety (90) days' written notice to the Secretary; provided, however, that such withdrawal shall not relieve a Party (i) of any obligations for its share of Agreement administrative expenses for the period prior to the effective date of its withdrawal, or (ii) of its share of any existing Agreement financial obligation to a third party (e.g., a contract with a vendor), and provided further that neither withdrawal nor termination shall have any effect on the

Parties' rights, obligations and/or liabilities vis-à-vis another Party that previously accrued under the Agreement.

ARTICLE 10 LAW AND ARBITRATION

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to provisions regarding conflicts of law, subject to the Shipping Act, implementing regulations of the FMC, and U.S. general maritime law, to the extent applicable.
- B. Except as the Parties to a particular dispute may otherwise agree, any dispute or difference arising out of or in connection with this Agreement which cannot be amicably resolved between or among any Parties shall in all cases be referred for resolution to a single arbitrator in Tacoma familiar with corporate and/or maritime matters, and the type of business conducted by the Parties, who shall have no financial or personal interest whatsoever in or with any Party and shall not have acquired a detailed prior knowledge of the matter in dispute. The arbitrator shall be appointed by the mutual agreement of the Parties to the arbitration or, failing such agreement and upon application by any Party to the arbitration, by the American Arbitration Association ("AAA"). The arbitration will be conducted pursuant to the commercial arbitration rules of the AAA. Except by agreement of the Parties to the dispute, discovery shall be limited to the production of discoverable documents, as defined by the Federal Rules of Civil Procedure, and the arbitrator shall have the power to subpoena same.
- C. The arbitrator's decision, including the written findings of fact and conclusions, shall be final and conclusive; judgment may be entered on the award and the award shall be enforceable in any court of competent jurisdiction; the arbitrator may allocate the cost of

arbitration to one or more participating Parties in a manner consistent with the award; the arbitrator may not award exemplary or punitive damages.

ARTICLE 11 NON-ASSIGNMENT

Except as otherwise unanimously agreed in writing by the Parties, no Party shall assign its rights or delegate its obligations under or pursuant to this Agreement to any other person or entity.

ARTICLE 12 CONFIDENTIALITY

- A. Each of the Parties for itself and on behalf of its employees, agents, and subcontractors hereby undertakes to the others, during the currency of this Agreement, as well after its termination or expiry, to keep confidential the contents of all information (written or oral, except for information already in its possession other than as a result of a breach of this Article, or in the public domain) concerning the business and affairs of the others that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Agreement, subject to applicable governmental or court requirements and Article 12(b) regarding information exchanges and disclosure to affiliates.
- B. Unless otherwise agreed, all information exchanged by the Parties that is clearly labeled or identified as confidential information shall be treated as confidential, proprietary and/or trade secrets by the Parties, and shall not be disclosed to any unaffiliated third party without the express written consent of the Party that provided the information. Such information may be disclosed to an affiliate of a Party, but only upon agreement of such affiliate to be bound to the same level of confidentiality as is required of the Parties under this Agreement. It shall not be a violation of this section to disclose information pursuant to lawful government requests or court orders.

- C. For purposes of this Article 12, disclosure to a Party's professional advisors or consultants as necessary for them to provide services to the Party shall not be deemed disclosure to a third party.

ARTICLE 13 INVALIDITY AND SEVERABILITY

Each term and provision of this Agreement shall be valid and enforceable to the full extent provided by law. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, legal, and commercial objectives of the invalid or unenforceable provision.

ARTICLE 14 AMENDMENT

This Agreement may not be amended, modified, or revised except in writing and duly signed by authorized signatories of each of the Parties, and subject to any applicable governmental filing requirements.

ARTICLE 15 NOTICES

Any notice or consent permitted or required under this Agreement shall be in writing and served on each Party at the address set forth herein (or such other address as may be designated by one Party to the other in writing), either by electronic delivery (at the email addresses provided by the parties to each other in writing), first class certified mail, return receipt requested, or by overnight delivery service.

ARTICLE 16 COUNTERPARTS

This Agreement and any future amendment hereto may be executed by the Parties in multiple counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

Signature Page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives as of this 15th day of February, 2018.

Husky Terminal And Stevedoring, Inc.

Washington United Terminals, Inc.

Keiji Kubo
Chairman and Chief Executive Officer

Eric C. Jeffrey
Legal Counsel

Appendix A: Parties

(a) Washington United Terminals, Inc. (“WUT”)
1815 Port of Tacoma Road
Tacoma, WA 98421

(b) Husky Terminal And Stevedoring, Inc. (“Husky”)
1101 Port of Tacoma Road, Terminal Four
Tacoma, WA 98421